IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1271 of 1992

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

J.C. VYAS.,CONDUCTOR

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 03/09/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the judgement and award dated 19th April 1991 passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No.334/90.

2.0 The respondent was employed as a Conductor by the petitioner Corporation. In the course of his duty on 21st March 1986 in a bus plying between Nadiad to Nathdwara, when the bus was checked at Kesariaji it was found that the delinquent had committed certain misconducts inasmuch as he had collected fare to the extent of Rs.43.75 from the passengers without issuing tickets in their favour. A chargesheet was issued and thereafter departmental inquiry was conducted. After the inquiry the respondent workman was found guilty. After second show-cause notice the respondent was dismissed from service by order dated 27th March 1987.

3.0 In the appeal filed by the petitioner the appellate authority by his order dated 26th February 1988 directed reinstatement of the workman and further directed that his increment for five years be stopped with future effect and that the period of absence be treated as on leave.

4.0 The respondent raised a dispute which culminated into Reference (IT) No.334/90 before Industrial Tribunal, Ahmedabad. The Industrial Tribunal by its judgement and award dated 19th April 1991 set aside the penalty and directed stoppage of two increments with future effect. It is against the said jdugement and award the present petition has been filed.

5.0 Learned counsel for the petitioner submitted that the impugned judgement and award is illegal inasmuch as the Industrial Tribunal has no jurisdiction to substitute the penalty for the penalty imposed by the Departmental Authority. He submitted that section 11-A of the Industrial Disputes Act is not applicable to penalty of stoppage of increment. He submitted that the delinquent having been found guilty of misappropriation of public funds, the penalty of stoppage of five increments was justified.

6.0 As against the aforesaid submissions, learned counsel for the respondent submitted that the petitioner has not made out any case for interference of the order passed by the Labour Court. According to the respondent, looking to the facts and circumstances of the case, even the stoppage of two increments with future effect is a harsh punishment.

7.0 I have heard the learned counsel for the respective parties and perused the relevant documents on record. Looking to the overall facts and circumstances

of the case I am of the opinion that the judgement and order of the Labour Court cannot be assailed. However, in view of the misappropriation of public funds, I am of the opinion that the award of the Labour Court is required to be modified to the extent that the respondent workman may be paid 50% of arrears of amount pursuant to the modification of order by the Labour Court.

8.0 In view of the aforesaid discussion, the petition is partly allowed. The order of the Labour Court is modified to the extent that the penalty of stoppage of increments for two years with permanent effect is confirmed, but the petitioner is entitled to get only 50% of the arrears. Rule is made absolute to the aforesaid extent with no order as to costs. The respondents are directed to pay the consequential benefits to the petitioner within a period of two months from the date of receipt of writ of this order.

[K.S.JHAVERI, J.]
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